

CHAPTER 4. SELECTION AND APPOINTMENT

SUBCHAPTER 6. EXAMINATION AND SELECTION DISQUALIFICATION AND APPEALS

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4A:4-6.1 Examination and selection disqualification

(a) A person may be denied examination eligibility or appointment when he or she:

1. Lacks the job requirements;
2. Is ineligible, by law, for employment in the title;
3. Is physically or psychologically unfit to perform effectively the duties of the title. However, an injury incurred in the armed forces shall not be considered a disqualification unless the Commissioner considers the condition incapacitating;
4. Has failed to pass examination procedures;
5. Has been removed from the public service for disciplinary reasons after an opportunity for a hearing;
6. Has made a false statement of any material fact or attempted any deception or fraud in any part of the selection or appointment process;
7. Has a prior employment history which relates adversely to the title; or
8. Has failed to pay the required application processing fee in a timely manner, or for open competitive examination, has failed to provide documentation of exemption from the application processing fee in a timely manner; or
9. Other sufficient reasons.

(b) Except where precluded by law, a person who is disqualified pursuant to (a)5 and 7 above may, for good cause, be admitted to an examination and, with the appointing authority's concurrence, certified for appointment.

(c) Any action specified in this section shall be effective upon receipt of written notice of disqualification.

4A:4-6.2 Actions against disqualified persons

(a) A disqualification under N.J.A.C. 4A:4-6.1 may result in:

1. Rejection of examination application;
2. Refusal to test an individual;
3. Refusal to place a candidate's name on an eligible list;
4. Refusal to certify an eligible's name;
5. Removal of an eligible's name from the eligible list;
6. Removal from employment; or
7. Other appropriate action.

(b) Major disciplinary procedures shall be applicable to removal of an employee who is permanent or serving in a working test period.

4A:4-6.3 Examination and selection appeals

(a) Appeals may be made on:

1. Examination items, scoring and administration (See N.J.A.C. 4A:4-6.4);
 2. Disqualification for medical or psychological reasons (See N.J.A.C. 4A:4-6.5);
- and

3. Examination related matters other than (a)1 and (a)2 above (See N.J.A.C. 4A:4-6.6) including:

- i. Disqualifications under N.J.A.C. 4A:4-6.1;
- ii. List extension or revival; and
- iii. Denial of veterans preference.

(b) The appellant shall have the burden of proof, except for medical or psychological disqualification appeals, where the appointing authority shall have the burden of proof.

(c) Unless ordered by the Commissioner, the filing of an appeal shall not affect the promulgation of a list, a certification or an appointment. See N.J.A.C. 4A:4-1.4 for conditional appointments.

(d) A person who has filed an appeal concerning an examination disqualification may, where appropriate, be admitted to the examination. However, the person's examination results will not be processed while the review is pending.

(e) All appeals shall be in writing and include the examination title and symbol number where appropriate, the action being appealed, the specific objections and requested relief.

(f) A party to an appeal must serve copies of all materials on every other party.

4A:4-6.4 Review of examination items, scoring and administration

(a) Candidates for multiple choice examinations shall be permitted to review the scoring key for a period of five business days beginning on the second business day after the examination has been held.

1. Within the review period set forth in (a) above, candidates may file an appeal against the scoring key and/or examination items.

2. The appeal shall be in writing, specify the question(s) being challenged and must be received by the Department of Personnel by the end of the review period.

3. All questions under appeal shall be reviewed by the Department of Personnel and, when necessary, appropriate action taken to modify the examination scoring.

4. No appeal relating to the scoring key or a multiple choice examination shall be permitted after the review period.

(b) Candidates for tests other than multiple choice may review their examination papers and the scoring key and may file an appeal in writing of examination items and scoring 20 days after the Department of Personnel provides notification of examination results. Candidates for multiple choice examinations may review their examination papers and the scoring key during this 20 day period, but may file appeals during this period only with respect to the scoring of their test papers. See (a) above for multiple choice scoring key and/or examination item appeals.

(c) An examination candidate wishing to challenge the manner in which the examination was administered may file an appeal in writing at the examination site on the day of the examination.

(d) Candidates shall not be permitted to copy any of the questions and answers, but shall be allowed to make such limited notes as the Department of Personnel permits.

(e) In order to maintain the security of the examination process, the Commissioner may, on a particular examination, modify or eliminate the review of examination questions and answers. Candidates shall be notified of any such restrictions at the time that the examination is administered.

(f) The Merit System Board shall decide any appeal on the written record or such other proceeding as the Board deems appropriate.

4A:4-6.5 Medical and/or psychological disqualification appeals

(a) An appointing authority may request that an eligible's name be removed from an eligible list due to disqualification for medical or psychological reasons which would preclude the eligible from effectively performing the duties of the title.

1. The appointing authority shall furnish to the Department of Personnel a copy of the certification and a report and recommendation supporting the removal request, prepared and signed by a physician, psychologist or psychiatrist who is licensed in New Jersey or qualified and employed by the appointing authority in the Clinical Psychologist title series.

2. The appointing authority submission shall include a finding that the eligible is not qualified due to medical or psychological reasons for the title. A removal request may be denied where such professional report and recommendation is not provided. See (f) below for report requirements.

3. All medical, psychiatric, and psychological examinations performed at the appointing authority's request shall be at the appointing authority's expense.

(b) In accordance with the Americans with Disabilities Act, 42 U.S.C. 12101 et seq., an appointing authority may only require a medical and/or psychological examination after an offer of employment has been made and prior to appointment, and may condition the offer of employment on the results of such examinations, if:

1. All eligibles for the title, to whom an offer of employment is made, are subjected to such examinations;

2. Information obtained pursuant to this section regarding the medical condition or history of an employee shall be collected and maintained on separate forms and in separate medical files and treated as a confidential medical record, except that:

i. Such information shall be available to appropriate appointing authority and Department of Personnel representatives in connection with inquiries into the ability of an applicant to perform essential job functions;

ii. Supervisors and managers may be informed regarding necessary restrictions on the work or duties of the employee and necessary accommodations;

iii. Authorized first aid and safety personnel may be informed, when appropriate, if the condition might require emergency treatment, or if any specific procedures are needed in the case of fire or other evacuation; and

iv. Government officials investigating compliance with the Americans with Disabilities Act, or any other Federal or State law prohibiting discrimination on the basis of disability or handicap, shall be provided relevant information on request; and

3. The results of such examinations are used only in accordance with the Americans with Disabilities Act.

(c) Upon receipt of satisfactory documentation, the Department of Personnel shall notify the eligible that:

1. He or she has been disqualified for appointment;

2. He or she may file an appeal with the Merit System Board within 20 days of such notification;

3. If no appeal is received within the specified time, his or her name will be removed from the eligible list; and

4. If the eligible does file an appeal, an opportunity will be provided to submit a report from a physician, psychologist or psychiatrist of his or her own choosing.

(d) Upon receipt of a notice of an eligible's appeal, the appointing authority shall submit to the Merit System Board, within 20 days, all background information, including any investigations and all complete medical, psychological and/or psychiatric reports which were the basis for the removal request.

1. The appointing authority shall also furnish the appellant with all of the information supplied to the Merit System Board.

2. In those limited circumstances when the examining physician, psychologist or psychiatrist certifies that such disclosure would be injurious to the appellant's health, and provides a basis specific to the diagnosis of that appellant, the information shall not be provided to the appellant but shall be provided by the appointing authority to the appellant's attorney or doctor.

3. Any appointing authority failing to submit the required materials within the specified time may have its request for removal denied, and the eligible's name may be retained on the eligible list.

(e) The appellant may submit to the Merit System Board a report from a New Jersey licensed physician, psychologist or psychiatrist of his or her own choosing. The appellant shall furnish the appointing authority with copies of all submissions to the Merit System Board. See (f) below for report requirements.

(f) The Merit System Board may extend the time period for filing the required reports for good cause. Professional reports submitted by either of the parties shall include the following:

1. The professional's signature, type of license (including the type of license or educational degree of any person contributing to the report), address, and the date;

2. The length of the examination or interview;

3. A specific diagnosis or statement of behavioral pattern or the specific reasons for a recommendation;

4. A finding as to the qualifications of the appellant for effective performance of the duties of the title; and

5. All tests that have been administered (for example, EKG, EEG, X-ray, M.M.P.I., Rorschach and T.A.T.) and all raw data, protocols, computer printouts and profiles from these tests.

(g) The Merit System Board shall either conduct a written record review of the appeal or submit psychological appeals to the New Jersey Personnel Medical Review Panel (Review Panel), and medical appeals to the New Jersey Personnel Medical Examiners Panel (Examiners Panel). The Panels are composed of professionals in the medical or psychological field. Either Panel may request additional psychological or medical reports, examinations or other materials.

1. When submitted to the Review Panel or Examiners Panel, the appellant or the appointing authority may request the opportunity to appear before the Panel. Such request must be made within 10 days from receipt of notice that the appeal has been submitted to a Panel.

2. If no appearance is requested, the appeal will be reviewed by the Panel upon the written record.

3. The Panel shall prepare a written report and recommendation for the Merit System Board.

i. The appellant and appointing authority shall be provided with copies of the report and recommendation.

ii. Both parties may file written exceptions with the Merit System Board within 10 days of receipt of the report and cross-exceptions within five days.

4. In appropriate cases, the Merit System Board may refer an appellant for an independent professional evaluation.

5. The Merit System Board may assess costs and penalties against a party when the inadequacy of a professional report necessitates an independent professional evaluation, when a party causes unnecessary delay in the review process, or for other substantial violation of these rules.

(h) The Merit System Board shall review the appeal, including the written report and exceptions, if any, and render a written final decision.

4A:4-6.6 Disqualification appeals

(a) Appeals other than scoring, item and administration appeals (N.J.A.C. 4A:4-6.4) and medical and/or psychological disqualification appeals (N.J.A.C. 4A:4-6.5) shall follow the following procedures:

1. The appeal shall be filed within 20 days of notice of the action, decision or situation being appealed.

2. An appeal must be filed with the Department of Personnel as indicated on the notice advising of disqualification.

(b) The Merit System Board shall decide any appeal on the written record or such other proceeding as the Board deems appropriate.